

FILED**MAY 23 2008**

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

KELLY REX MIESSNER,)	CV 05-66-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
SHERIFF/WARDEN CASTLE; ATTORNEY)	
GENERAL OF THE STATE OF MONTANA,)	
)	
Respondents.)	
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KELLY REX MIESSNER,)	CV 07-34-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
DAN O'FALLON, Warden, Cascade)	
County Regional Prison; ATTORNEY)	
GENERAL OF THE STATE OF MONTANA,)	
)	
Respondents.)	
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United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on April 30, 2008. The parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been

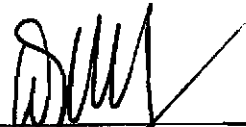
committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

This case is before the Court on two Petitions for Writ of Habeas Corpus filed under 28 U.S.C. § 2254. Petitioner challenges his 2003 conviction in Montana's Twenty-First Judicial District Court and a contemporaneous probation revocation. Petitioner raises issues relating to his arrest, his guilty plea, irregularities in the state proceedings, his probation revocation, the fitness of the state district judge, and the quality of his counsel. Judge Lynch reviewed the claims on the merits and concluded that none of them makes a colorable showing of a violation of federal law. On that basis Judge Lynch recommends dismissal of the Petitions and denial of a certificate of appealability.

I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that the Petitions for Writ of Habeas Corpus are DENIED on the merits, and a certificate of appealability is DENIED. The Clerk of Court is directed to enter judgment by separate document in both cases in favor of Respondents and against Petitioner Miessner.

DATED this 23rd day of May, 2008.



Donald W. Molloy, District Judge
United States District Court